

PUBLIC LAW BOARD NO. 2444

Award No. 52

Case No. 66

Docket No. MW-81-14
300-3-A

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement Claim of BMWE and Track Laborer Joseph Owens for reinstatement
of to his former position with all seniority, vacation rights,
Claim and any other rights accruing to him unimpaired, in addition
to all compensation lost commencing September 15, 1980 to run
concurrently until he is restored to service.

Findings The Board, after hearing upon the whole record and all
evidence, finds that the parties herein are Carrier and Employee, within
the meaning of the Railway Labor Act, as amended, that this Board is
duly constituted by Agreement dated July 19, 1979, that it has
jurisdiction of the parties and the subject matter, and that the parties
were given due notice of the hearing held.

Claimant, a track laborer on extra gang 141, was advised under date
of September 17, 1980, as follows:

"You are dismissed from the services of the Southern
Pacific Transportation Company for being absent from
your employment as Lafayette Division Track Laborer
without authority on September 13, 1980, which is in
violation of that portion of Rule M810 of General Rules
and Regulations of General Notice effective April 1, 1978
of Southern Pacific Transportation Company, which reads
as follows:

'Rule M810. Employees must report for duty at the prescribed
time and place, remain at their post of duty and devote
themselves exclusively to their duties during their tour
of duty. They must not absent themselves from their employ-
ment without proper authority...."

Claimant requested and was granted a hearing, which was held on November 18, 1980. As a result thereof he was advised that the dismissal was sustained.

The Board finds Claimant had been accorded the due process to which entitled under his discipline rule.

There was sufficient evidence adduced to support the Carrier's conclusion as to Claimant's culpability.

The Board finds that there are mitigating circumstances which serve to permit a modification of the discipline assessed. Consequently, we will reinstate Claimant to service with all rights unimpaired, but without pay for time out of service and Claimant will be placed in a probationary status for a six month period. If Claimant, after notification of these conditions, has not advised Carrier and the Organization of his acceptance the claim will be denied at such time.

AWARD: Claim disposed of as per findings.

ORDER: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


M. A. Christie, Employee Member


C. B. Goyne, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, May 29, 1982.